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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re MELISSA M., a Person Coming  
Under the Juvenile Court Law.

B291209

(Los Angeles County  
Super. Ct. No. 18CCJP02572)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

WENDI W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County. Rashida A. Adams, Judge. Affirmed.

Nicole Williams, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Acting Assistant County Counsel, and Veronica Randazzo,  
Deputy County Counsel for Plaintiff and Respondent.

Appellant Wendi W. (mother) appeals from the juvenile court's jurisdictional and dispositional orders declaring her infant daughter Melissa to be a dependent of the court, removing Melissa from her custody, and according her monitored visitation. Mother contends there was insufficient evidence to support the juvenile court's findings, under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> that mother's mental and emotional health problems placed Melissa at risk of serious physical harm and that Melissa's father, Mario M. (father),<sup>2</sup> failed to protect Melissa by allowing mother to have unlimited access to her. Mother further contends substantial evidence does not support the dispositional order removing Melissa from her custody, or alternatively, that the order for monitored visitation should be reversed.

We affirm the juvenile court's orders.

### **BACKGROUND**

#### **Initial referral**

In April 2018, the Los Angeles County Department of Children and Family Services (the Department) received an immediate response referral for newborn Melissa, alleging caretaker incapacity by mother. The referral indicated the doctor was concerned about mother's mental health because mother was laughing and talking to herself, hiding from the nurse by covering her head, and then "peeping" at the nurse by pulling the sheets off her head. Mother admitted that she had a history of mental illness and had been hospitalized five years ago.

The Department's investigating social worker spoke with hospital social worker Anna King, who said that mother had not

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father is not a party to this appeal.

known she was pregnant until four weeks before giving birth. King's primary concern was that mother was not interacting with the baby, although on the day they were discharged mother "perked up" and began interacting with Melissa.

The Department attempted unsuccessfully over the next several days to contact mother. On April 6, 2018, two social workers met with father and the maternal aunt at the maternal aunt's home, where Melissa was present and being cared for. Father told the social workers that he had known mother for two years but they had never lived together. He said that mother had told him she receives Social Security benefits because she is bipolar. He did not know whether she was taking any medication. Father agreed that the plan for Melissa was to have both father and the maternal aunt care for her in their respective homes and to have mother visit with Melissa on weekends.

The maternal aunt confirmed that Melissa would live in her home. She added that mother planned on moving into the home as well. The maternal aunt stated that she does not currently work and is able to provide 24-hour supervision for Melissa. When asked whether she had any concerns for mother, the maternal aunt stated that mother used to talk to herself but that she seemed better since Melissa's birth.

The social worker met with mother at the Department's El Monte office on April 11, 2018. Mother said she receives Social Security benefits because she is bipolar, and that she was hospitalized a long time ago but continues to receive benefits. When asked when the hospitalization occurred, mother responded, "I don't know 5, 8, 10 years ago." Mother became angry when asked if she is taking care of her mental health and stated that "everything is cleared." She denied taking any medication or having any mental health issues and stated repeatedly that she does not talk to herself. The social worker

observed that although mother was clearly angry, she was laughing at the same time. Mother initially agreed to a mental health assessment and signed an authorization form, but then changed her mind and angrily denied having any mental health issues. She accused the hospital staff of providing inaccurate information to the Department. Mother agreed to have Melissa stay in father's home and that she would visit the child at the maternal aunt's home on weekends.

### **Detention and section 300 petition**

On April 19, 2018, the social workers made an unannounced visit to mother's home, where they encountered father outside the home preparing to leave. Melissa was inside with mother. Father said he was on his way to school, was leaving Melissa with mother, and would pick the child up the following day. He then said he was planning to pick Melissa up when he returned from school later that same night. The social workers pointed out that the previously agreed upon plan was to have father and the maternal aunt care for Melissa, and for mother to have monitored visits at the maternal aunt's home.

Father texted and telephoned mother, who eventually came out to unlock the front entry gate to her home. Mother allowed the social workers into the home and agreed to speak with them privately. When the social workers stated that the agreed upon plan for Melissa was to have her stay at father's home during the week and for mother to have monitored weekend visits at the maternal aunt's home, mother said, "My sister won't let me go to her house." When asked why, mother responded, "I don't know where she lives. She won't tell me where she lives." Mother appeared at times to be confused, stating that she thought the social workers had come to her home to check the stove. When the social workers pointed out that keeping Melissa in mother's home was inconsistent with the parties' verbal agreement for

Melissa's care, and that mother had declined to participate in a mental health assessment, mother became angry, shouting, "I'm perfectly fine! I'm not crazy! You're telling me I can't see my kid. I'll see my fucking kid! You watch! I'll go to my sister's and see my fucking kid!"

Father then entered the room and explained to the social workers that mother wanted to spend more time with Melissa. The social workers explained that mother's refusal to address her mental health issues placed Melissa at risk of harm. Father then spoke to mother and said that if she went to the Department of Mental Health, she could have Melissa with her in her home. Mother was unresponsive.

As father and the social workers were preparing to leave, mother stated "My sister wants to kill her." Father asked mother to clarify who her sister wanted to kill, but mother would not respond. Father later acknowledged that mother's behavior raised concerns about Melissa's safety and agreed to move the child back to his home. He stated: "I realize I might have been minimizing [mother's] condition."

The Department determined that exigent circumstances existed to detain Melissa from mother. The social workers explained the Department's decision to mother, who said she understood and then surrendered Melissa to father.

On April 23, 2018, the Department filed a section 300 petition on Melissa's behalf, alleging that mother's mental and emotional problems rendered her incapable of providing Melissa with regular care and supervision. The petition further alleged that father knew of mother's mental and emotional problems and failed to protect Melissa by allowing mother to have unlimited access to her.

At the April 24, 2018 detention hearing, the juvenile court ordered Melissa detained from mother and released to father.

Mother was accorded monitored visits at the maternal aunt's home but was not allowed to live in the home or to have overnight visits.

### **Jurisdiction/disposition report**

In its June 2018 jurisdiction/disposition report, the Department stated that it had made several unsuccessful attempts to meet with mother. Mother had sent the social worker several incoherent emails and text messages claiming she had to pay \$50 to visit Melissa and accusing the Department and the hospital staff of being racist and attempting to "frame" her. On April 25, 2018, the hospital social worker reported that mother had made several telephone calls to various hospital departments claiming she had been framed. On April 25, 2018, mother went to the Department's El Monte office and asked whether she had to pay in order to visit with Melissa. When mother was told she did not have to pay, she laughed and left the office. Mother's behavior caused the Department to change the location of her visits to the Department's offices, to be overseen by an approved monitor.

Mother visited with Melissa on May 16 and May 18, 2018. During the May 18, 2018 visit, mother held Melissa appropriately but periodically turned her head away from the child and mumbled as if she was speaking to someone else. Mother had to be redirected several times by the monitor for staring off into space for long periods of time.

In a May 22, 2018 interview, father told a dependency investigator that while he and mother were dating, mother told him that she heard voices. Mother identified one of the voices as a person named "David Chang," and said that she hated him. She told father that spirits spoke to her as well. Father also stated that mother would sometimes send him hundreds of incoherent and nonsensical text messages or voice messages. He

denied knowing whether mother had any previous mental health hospitalizations or treatment. When asked whether he had any concerns, father reported that mother “says the child . . . has evil eyes and tells the baby that I’m not the father.”

On May 22, 2018, the dependency investigator spoke by telephone with the maternal aunt, who denied any knowledge of mother’s mental health issues. She said, however, that mother talks to herself from time to time. The maternal aunt expressed the belief that mother needed to be seen by a doctor.

A child and family team meeting was held on May 18, 2018, but mother was unable to fully participate. She behaved erratically, spoke loudly, and would not listen to any of the other participants.

### **Adjudication and disposition**

At the combined jurisdiction and disposition hearing held on June 19, 2018, the juvenile court admitted into evidence the Department’s reports and heard argument from the parties. Mother interrupted the proceedings several times, prompting the juvenile court to admonish mother to let her attorney speak for her.

The juvenile court sustained the allegations that mother’s mental and emotional problems rendered her incapable of providing Melissa with regular care and supervision. The court amended the allegations regarding father to state that he had failed to protect the child by not adequately recognizing the extent of mother’s mental and emotional problems and by allowing mother to have unlimited access to Melissa. The court then sustained the petition as amended.

During the dispositional phase of the hearing, when Melissa’s counsel addressed the court regarding mother’s monitored visits and asked that father not monitor the visits, mother again interrupted the proceedings, stating: “What are

you doing?” and “[t]hat’s not how my daughter feels.” The juvenile court again admonished mother to let her attorney speak for her.

The juvenile court then ordered Melissa removed from mother’s custody and released to father, with family maintenance services for father and enhancement services for mother. The court ordered mother to participate in a developmentally appropriate parenting education program, undergo a psychological assessment and psychiatric evaluation, and to take all prescribed medication. Mother interjected, saying she had her medicine, attended parenting classes, and had scheduled individual counseling. She insisted she wanted father to monitor her visits. The juvenile court continued to state the terms of mother’s case plan for the record and ordered individual counseling to address case issues and monitored visits three times a week for three hours per visit. Mother again interrupted, stating she was only getting visits twice a week. The juvenile court admonished mother that if she continued to interrupt she would have to leave the courtroom. The court then ordered the visits to be monitored by a Department approved monitor and that father not be allowed to monitor mother’s visits. When the court set the status review hearing for December 18, 2018, mother continued to interrupt, stating that Melissa “looks like she’s retarded and blind with [father’s] mom and sister taking care of her. You’re not even helping me baby. My baby is with me.” The juvenile court asked mother to leave the courtroom, and mother stated: “She [Melissa] told me I’m the only one that loves her. . . . She told me I’m the only one that loves her. When [father’s] mom and sister take care of her, her eyes look crazy.” The juvenile court recessed the proceedings until the parties exited the courtroom. When proceedings resumed, the court



stated on the record that it would direct counsel to communicate an appellate advisement to their respective clients.

## **DISCUSSION**

### **I. Standard of review**

We review mother's challenge to the sufficiency of the evidence supporting the juvenile court's jurisdictional findings under the substantial evidence standard. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450.) The substantial evidence standard also applies to mother's challenge to the dispositional orders. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 145-146.) Under that standard, "the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court's findings. [Citations.]" (*Alexis E.*, at pp. 450-451.)

### **II. Jurisdiction**

Section 300, subdivision (b) authorizes the dependency court to assume jurisdiction over a child when the child has suffered, or is at a substantial risk of suffering serious physical harm as a result of the parent's failure or inability to adequately supervise or protect the child. Risk of harm to a child cannot be presumed from the mere fact the parent has a mental illness. (*In re A.G.* (2013) 220 Cal.App.4th 675, 684.) A substantial risk of serious physical harm can be established by proof of an "identified, specific hazard in the child's environment," or by the failure to rebut the presumption that the "absence of adequate

supervision and care poses an inherent risk to their physical health and safety” of a child of “tender years.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics omitted.)

Melissa, who was three months old at the time of the jurisdictional hearing, was a child of “tender years,” requiring constant care and supervision. Mother presented no evidence to rebut the presumption that her mental and emotional problems pose an inherent risk to her ability to care for Melissa. The evidence in the record confirms that risk. The evidence shows that mother behaved erratically throughout the case, and was unable to participate in a child and family team meeting or to refrain from disruptive behavior during the adjudication and dispositional hearing. Mother appeared confused or delusional at times, saying she heard voices of spirits or imaginary people; believing that the social workers had come to her home in order to check her stove, or that she had to pay \$50 in order to visit Melissa; telephoning the hospital staff and accusing them of “framing” her; and making statements implying that Melissa spoke to her, such as “she told me I’m the only one that loves her.” Mother also made disturbing comments, stating that Melissa had “evil” or “crazy” eyes, and “[m]y sister wants to kill her.” While visiting with Melissa, mother stared off into space for extended periods of time and had to be redirected several times by the monitor. Although mother admitted she had been hospitalized for mental health problems, had been diagnosed as bipolar, and received Social Security benefits for her condition, she insisted she had no mental health issues, denied taking any medication, and refused to undergo a mental health assessment or evaluation. There is ample support in the record for the juvenile court’s finding that mother’s emotional and mental health problems rendered her unable to provide Melissa with regular care and supervision.

*In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*), *In re James R.* (2009) 176 Cal.App.4th 129 (*James R.*), and *In re A.L.* (2017) 18 Cal.App.5th 1044 (*A.L.*), the cases upon which mother relies to support her jurisdictional challenge, are distinguishable.

The appellate court in *David M.* reversed the juvenile court's jurisdictional orders, after finding a lack of substantial evidence that the parents' mental health problems placed their children at risk of harm. The social services agency had undertaken no independent investigation of the parents' alleged mental health issues, but had instead relied solely on a summary of a four-year-old Evidence Code section 730 report prepared in a previous, separate dependency case involving a half-sibling. The investigating social worker in *David M.* had not even read the section 730 report in its entirety. (*David M.*, *supra*, 134 Cal.App.4th at p. 830.) Here, in contrast, the juvenile court had current as well as contemporaneous information concerning mother's mental and emotional problems. Mother admitted she was bipolar and heard voices, behaved erratically throughout the case, made disturbing statements such as "[m]y sister wants to kill her" and that Melissa had "evil" or "crazy" eyes. Mother was unable to participate in a child and family team meeting or to refrain from disruptive behavior during the adjudication and dispositional hearing.

*James R.* is also distinguishable. The appellate court in that case found insufficient evidence that the mother's mental health and substance abuse issues placed the children at risk of harm. The evidence included a doctor's testimony that mother was not a danger to herself or others and posed no risk to her children (*James R.*, *supra*, 176 Cal.App.4th at p. 133), a social worker's testimony that she was unconcerned about the children's safety (*ibid.*), and mother's consistent participation in therapy and substance abuse treatment during the three months

preceding the adjudication hearing. (*Id.* at p. 134.) In this case, although mother admitted being bipolar and having a previous mental health hospitalization, she denied having any current mental health issues or taking any prescribed medication. She behaved erratically throughout the case, appeared to be delusional or confused at times, and refused to participate in a mental health assessment.

*A.L.* is similarly factually distinguishable. The incident that prompted the Department's intervention in that case occurred when the mother, who was schizophrenic, stopped taking her medication. The mother believed that people were trying to poison her, and when the father tried to calm her down, she became upset and began throwing objects, including a shoe that hit her 15-year-old son on the arm. At that point, the father physically restrained the mother and called law enforcement. The mother was hospitalized in a psychiatric facility until she stabilized, and once released, she resumed taking her medication. The court in *A.L.* reversed the juvenile court's assumption of jurisdiction based on the mother's mental illness and the father's failure to protect, noting that the incident was the first time the family had sought assistance from law enforcement; no one was injured; the children, ages 11 and 15, knew how to respond to their mother's mental health issues; and the father had responded promptly to seek appropriate help. (*A.L.*, *supra*, 18 Cal.App.5th at pp. 1049-1051.)

In the instant case, Melissa was only three months old. mother behaved erratically, denied taking any medication, refused a mental a mental health assessment, and made disturbing comments that Melissa had "evil" eyes and that the maternal aunt wanted to kill her. Father left Melissa alone in mother's care, and later admitted that he failed to recognize the

extent of mother's mental health problems and that those problems presented concerns for Melissa's safety.

Substantial evidence supports the juvenile court's jurisdictional findings that mother's mental and emotional problems placed Melissa at a substantial risk of harm and that father failed to protect Melissa by not adequately recognizing the extent of mother's mental and emotional problems and by allowing mother to have unlimited access to the child.

### **III. Dispositional orders**

Section 361, subdivision (c) authorizes the dependency court to remove a child from the physical custody of the parent with whom the child resides at the time a section 300 petition is filed if the court finds, by clear and convincing evidence, that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the . . . parent's . . . physical custody. (§ 361, subd. (c)(1).)

"A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

Mother contends there was insufficient evidence to support the dispositional order removing Melissa from her custody and

that there were reasonable alternatives to removal.<sup>3</sup> Substantial evidence supports the removal order. Mother's delusional and erratic behavior, her refusal to cooperate with the social workers or to participate in a mental health assessment, her denial of any mental health issues or need for medication, her comments that Melissa had "evil" or "crazy" eyes, and Melissa's tender age, provide ample support for the juvenile court's removal order.

*In re Matthew S.* (1996) 41 Cal.App.4th 1311, which mother cites in support of her challenge to the removal order, is distinguishable. The social services agency in that case recommended that the children not be removed from the home, despite the mother's admissions that she suffered from delusions as well as multiple personality disorders. (*Id.* at p. 1316.) The children, ages 13 and 16, had a warm, close, and loving relationship with their mother and were able to recognize her delusions and to deal adequately with them. (*Id.* at pp. 1316-1317.) The mother had voluntarily participated in extensive therapy over the years (*id.* at p. 1319), and a doctor who conducted a psychological assessment of the family concluded that removing the children from mother "would do more harm than good to everyone involved." (*Id.* at p. 1317.)

Here, unlike the teenaged children in *Matthew S.*, Melissa was an infant incapable of dealing with mother's delusions and erratic behavior. Despite her erratic behavior, mother denied any mental health issues and refused to participate in a mental health assessment or evaluation. There was no evidence that mother was participating in any mental health services or that

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<sup>3</sup> We reject the Department's argument that mother forfeited her challenge to the removal order based on a lack of substantial evidence. A parent's challenge to a removal order based on the sufficiency of the evidence is not forfeited even if not raised in the juvenile court. (*In re R.V.* (2012) 208 Cal.App.4th 837, 848.)

she was taking any medication. Mother's unsworn statements, made during her outbursts at the disposition hearing, that she had medicine and was participating counseling, is not evidence within the meaning of the Evidence Code. (*In re Heather H.* (1988) 200 Cal.App.3d 91, 95.)

The record here also shows that reasonable alternatives were considered and tried before removing Melissa from mother's custody. The Department initially agreed to a voluntary plan that provided for Melissa's care in father's home and the home of the maternal aunt, and that allowed mother to have visits in the maternal aunt's home. The parents failed to comply with that voluntary plan. The Department also urged mother to participate in a mental health assessment and evaluation, but mother refused to do so. Reasonable efforts were made to avoid removing Melissa from mother's custody. (See *In re H.E.* (2008) 169 Cal.App.4th 710, 725 ["reasonable efforts, like reasonable services, need only be reasonable under the circumstances"].)

We reject mother's alternative argument that the order for monitored visitation should be reversed. Section 362.1 governs visitation between a dependent child and his or her parent. Subdivision (a)(1)(A) of that statute provides that "[v]isitation shall be as frequent as possible, consistent with the well-being of the child," subject to the condition that "[n]o visitation order shall jeopardize the safety of the child" (subd. (a)(1)(B)).

An order setting visitation terms is reviewed for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) An abuse of discretion does not occur unless the juvenile court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.)

Mother's erratic and delusional behavior, her denial of any mental health issues, and her refusal to participate in a mental

health assessment or evaluation provide ample support for the juvenile court's order for monitored visitation. The order gives the Department discretion to liberalize the visits, and for father to monitor the visits if approved by the Department. Mother can request unmonitored visits once she has demonstrated progress in her case plan. The record discloses no abuse of discretion.

**DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST